TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1926

No. [redacted] 111

THE UNITED STATES OF AMERICA EX REL. EMANUEL VAJTAUER, APPELLANT,

vs.

THE COMMISSIONER OF IMMIGRATION AT THE PORT OF NEW YORK

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

FILED MAY 18, 1926

(31,172)

(31,172)

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[fol. 1] **IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK**

M-10-44

UNITED STATES OF AMERICA ex Rel. EMANUEL VAJTAUER, Relator,

against

COMMISSIONER OF IMMIGRATION, ELLIS ISLAND, NEW YORK HARBOR, Respondent

WRIT OF HABEAS CORPUS—Filed April 20, 1925

The President of the United States of America to James J. Davis, Secretary of Labor of the United States; Commissioner of Immigration at the Port of New York, and his deputies and any and all persons concerned in and having the custody of Emanuel Vajtauer, Greeting:

We command you that you have the body of Emanuel Vajtauer or by whatever name he shall be called before the United States District Court, at Room 235, Federal Building, in the Borough of Manhattan, City of New York, Southern District of New York, on the 9 day of January, 1925, at ten o'clock in the forenoon of said day, to do and receive what shall then and there be considered concerning this purpose, and we further command you that you certify fully and at large to the said court, at the said time and place, the cause of the imprisonment and detention of the said Emanuel Vajtauer or by whatever name he shall be called or held, and have you then and there at the time and place aforesaid this writ and your return thereon.

[fol. 2] Witness Honorable Augustus N. Hand, Judge of the United States District Court for the Southern District of New York, the 2 day of January, 1925.

Alex. Gilchrist, Jr., Clerk. (Seal.)

The above writ is hereby allowed.
Dated New York, January 2, 1925.

Wm. Bondy, United States District Judge.

Isaac Shorr, Attorney for Relator. Office & P. O. Address, 80 East 11th Street, Borough of Manhattan, City of New York.

[File endorsement omitted.]

[fol. 3] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR WRIT OF HABEAS CORPUS—Filed Jan. 2, 1925

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The petition of Emanuel Vajtauer respectfully shows:

First. That Isaac Shorr, as attorney for the petitioner, has been authorized by the petitioner to sue out a writ of habeas corpus in his behalf.

Second. Upon information and belief, that your petitioner is a citizen of Czechoslovakia, and is of the age of 32 years. That he arrived in the United States on the first day of December, 1923, and has resided in the United States since that time, having declared his intention to become an American citizen.

Third. That he is now detained and held for deportation at Ellis Island, New York Harbor.

Fourth. That on the 4th day of April, 1924, a warrant of arrest was issued by the United States Department of Labor requiring your petitioner to show cause why he should not be deported.

Fifth. That on or about the 14th day of May, 1924, your petitioner was accorded a hearing at Chicago, Illinois, pursuant to the warrant of arrest heretofore issued charging that he believed in, advised, advocated or taught the overthrow by force or violence of the government of the United States or of all forms of law; that prior to or at [fol. 4] the time of his entry he wrote, published or caused to be written or published or knowingly circulated, distributed, printed or displayed or knowingly caused to be circulated, distributed, printed, published or displayed, or knowingly had in his possession for the purpose of circulation, distribution, publication or display, written or printed matter advising, advocating or teaching opposition to all organized government; and that prior to or at the time of his entry he wrote, published or caused to be written or published or knowingly circulated, distributed, printed or displayed or knowingly had in his possession for the purpose of circulation, distribution, publication or display written or printed matter advising, advocating or teaching the overthrow by force or violence of the government of the United States or of all forms of law.

Sixth. That thereafter a warrant of deportation was issued ordering the deportation of the petitioner on the grounds as heretofore set forth.

Seventh. That there is no evidence in the record tending to prove or support any of the charges in the warrant of arrest nor any of the findings in the warrant of deportation, and said deportation order

or warrant was made without power, authority or jurisdiction in the premises, and the detention of your petitioner thereunder deprives him of life, liberty and property without due process of law and in violation of the Fifth Amendment to the Constitution of the United States.

Eighth. That upon information and belief, the cause or pretense of the imprisonment or restraint of your petitioner is a certain deportation warrant reciting that the Secretary of Labor has become satisfied that your petitioner should be deported on one or various of the grounds provided by the Act of October 16, 1918, as amended by the Act of June 5, 1920.

[fol. 5] Ninth. That the grounds on which the Secretary of Labor issued a warrant of deportation are so-called Exhibits A, B and C; Exhibit A-B being a pamphlet written in a foreign language with alleged translation of some extracts, and Exhibit C being an alleged translation of some speech purporting to have been made by one Dr. Vajtauer on the 21st day of March, 1924, which Exhibits were illegally, improperly and unfairly made part of the record against your petitioner and are not evidence on which the charges against him can be sustained.

Tenth. That the cause or pretense of your petitioner's imprisonment and restraint, according to the best of his knowledge, information and belief, is as aforesaid, and your petitioner is not imprisoned or detained by virtue of any process or mandate issued by any court of the United States or any judge thereof nor is he committed or detained by virtue of a final judgment or decree of a competent tribunal made in a special proceeding instituted for any cause or by virtue of execution or process issued upon a judgment, decree or final order other than as aforesaid.

Wherefore your petitioner prays that a writ of habeas corpus issue directing and commanding the Commissioner of Immigration at Ellis Island, New York Harbor, and any and all persons under his direction or control wherein your petitioner before this court for hearing and determination of this court concerning his wrongful detention and restraint and that your petitioner may have such other and further relief as may be just in the premises.

Emanuel Vajtauer, Petitioner, by Isaac Shorr, Attorney.

[fol. 6] Sworn to by Isaac Shorr. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 7] IN UNITED STATES DISTRICT COURT

[Title omitted]

RETURN TO WRIT OF HABEAS CORPUS—Filed April 20, 1925

SOUTHERN DISTRICT OF NEW YORK, ss:

Hyman A. Mintzer, being duly sworn, says that he is and during all the times herein mentioned has been an immigrant inspector in the service of the United States; that he is attached to the Law Department of the Immigration Service of the United States at Ellis Island, New York; that he in his official capacity is authorized to make and in behalf of the respondent hereby makes the following return to the writ of habeas corpus herein.

In compliance with the direction of this Court, the body of the said alien in his own proper person is produced herewith before this Court at the time specified in the writ.

It is respectfully urged that upon its face the petition upon which the writ was granted is insufficient in law, and that the writ should therefore be quashed because

[fol. 8] (a) The petition does not allege facts to show that the proceedings of the Department of Labor upon which was issued the warrant of deportation pursuant to which the said alien is held, were not regular, fair and in compliance with the statute applicable in such cases, nor facts from which this Court can determine that the proceedings were either irregular, unfair or not in compliance with said statute;

(b) The petition does not allege any facts which entitled this Court to review the findings and conclusion of the Department of Labor upon which the warrant of deportation was issued;

(c) It is not alleged that there was no evidence before the Department of Labor upon which it based or could have based its findings and conclusion in accordance with which the warrant of deportation was issued;

(d) It does not appear by allegation of facts that the issues sought by the petition now to be litigated in this Court have not already been determined by the Department of Labor adversely to the said alien in proceedings which were regular, fair and in compliance with the statute applicable thereto.

As appears by the records of the Department of Labor of the United States with respect to the above-named alien, copies of which are produced and filed herewith as part of this return;

[fol. 9] (1) This case came to the attention of the District Director of Chicago, Illinois by means of an anonymous letter stating that a Doctor Vajtauer, of Prague, Czecho Slovakia, Communistic Leader, was in this country in violation of law, in that he was spreading communistic doctrines at meetings in Chicago.

(2) After investigation, the Chicago Office applied for a warrant of arrest, which was issued on April 4, 1924. A hearing was granted the alien on May 14, 1924 and on August 27, 1924. At the hearing on the warrant of arrest, the alien was represented by Attorney Samuel H. Holland.

(3) At the time of the hearing there was introduced as evidence two pamphlets, the one being the report of the Fourth Congress of the Communist International which shows that the alien was a delegate to the Communist Convention held at Petrograd and Moscow from November 7th to December 3, 1922. Page 39 of said pamphlet contains a report of the remarks of the alien at the Convention in response to a speech made by one Zinovey. There is also a pamphlet marked "Exhibit A" on the Revolution and Dictatorship of the Proletariat written by Dr. E. M. Vajtauer. An extract, which is given on page 7, is translated and reads as follows:

"The Communist explained that all wrongs originated from greed of the capitalists, and that it is necessary to overthrow the governments of the greedy Bourgeoise. The poor people should rule themselves in order to have bread and peace."

The alien was asked whether he was the author of that passage. The Attorney replied that he had instructed him not to answer any questions at the hearing until the evidence is presented. Another translation from page 15 reads as follows:

[fol. 10] "Only when you kill the Bou-geois capitalist, only then you will be free. By this kind of primitive logic it is usually necessary to lead the revolting soldier in order that he should not unnecessarily sacrifice himself and others."

The alien was asked whether he was the author of this passage but the Attorney advised him not to answer this question.

(4) The alien was also asked whether he was the author of the remarks noted on page 39 of the report of the Fourth Congress of the Communist International made by one, Vajtauer, which was read to the alien. The Attorney again advised him not to reply to this question. The alien also, on the advice of his Attorney, refused to answer the question as to whether he belonged to the Communist Party.

(5) Another extract from Exhibit "A" was translated and reads as follows:

"During the attack the revolution must be merciless. It must destroy the old system, not leaving a single stone unturned."

Page 36 contains the following:

"The people, who suffered too long, will knock to the ground the socialist traitors and bou-geois and will punish with death any attempt of resistance. They have a right to do that; others have killed millions of their brothers previously. The lowest, the most suffering

class of people has seized the rule into its own hands. It took away every chance of the murderers for further oppression and crime. It dictates quietly to the former vampires. It carries on the dictatorship of the proletariat!

This is the first problem of the proletarian dictatorship, and that is to capture the murderers and traitors of the people, the imperialists, militarists, capitalists, bourgeoisie and social democrats—and prevent them from committing any further crimes."

It is believed that the quotations from the document clearly show that the author believes in the overthrow of government and all forms of law by force or violence.

[fol. 11] (6) The refusal of the alien to answer, at the advice of his attorney, does not prevent the alien's deportation under the charges named in the warrant. The United States Supreme Court in the case of Bilokumsky vs. Todd, 263 U. S. p. 149, says:

"Conduct which forms the basis for inference is evidence. Silence is often evidence of the most persuasive character."

(7) The record in this case shows that this man is an alien. In view of his refusal to answer the questions propounded to him in order to show cause why he should not be deported, it must be taken for granted that the alien is the author of the passages quoted. Aside from the quotations in the pamphlet above noted, there was also introduced in the record the report of the speech made by Dr. Vajtauer on March 21, 1924 in Chicago. The speech was not reported in its entirety. A summary merely has been given. The gist of this address, as shown by the report, clearly indicates the revolutionary ideas of this alien. The evidence in this case is sufficient to sustain the charges named in the warrant of arrest.

(8) The respondent respectfully denies any knowledge or information thereof sufficient to form a belief as to the truth of the allegations contained in paragraph "Second" except that the alien arrived on December 1, 1923 at New York Harbor, New York, and denies each and every allegation of paragraph marked and numbered "Ninth."

(9) Respondent respectfully denies any knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in each and every other paragraph of the petition except as to what is admitted in this return.

[fol. 12] Wherefore, deponent prays that the writ of habeas corpus herein be dismissed and the said alien remanded to the custody of the Commissioner of Immigration at Ellis Island, New York, N. Y. to be dealt with in accordance with the said warrant of deportation.

Hyman A. Mintzer.

Sworn to before me this 10th day of March, 1925. Armand Chanalian, Notary Public. N. Y. Co. Clerk's No. 529.

N. Y. Co. Register's No. 5021. My commission expires March 30, 1925.

[File endorsement omitted.]

[fol. 13] IN UNITED STATES DISTRICT COURT

[Title omitted]

REPLY—Filed April 20, 1925

The relator above named, by way of traverse to the return herein, alleges:

First. Hereby realleges and reincorporates each and every allegation contained in his petition verified the 2nd day of January, 1925.

Second. Alleges that his arrest on the warrant issued on or about the 4th day of April, 1924, was without reasonable and probable cause, and was in violation of Rule 22, Subdivision 3 of the Immigration Rules, and was an unreasonable seizure in violation of the Fourth Amendment to the Constitution of the United States.

Third. That such illegal arrest, made as aforesaid without reasonable or probable cause, was not cured nor the defects therein obviated by a subsequent fair hearing, but on the contrary, the hearing accorded the relator was unfair in that: (a) neither the relator nor his counsel were permitted to examine the evidence upon which such warrant of arrest issued; (b) improper evidence was introduced at said hearing over objection and incorporated into the record, as more fully set forth in paragraph ninth of the petition; (c) a complete [fol. 14] record of such hearing was not preserved; (d) the interpreter through whom the evidence at the hearing was adduced was not shown to be an official interpreter of the Labor Department nor was he ever sworn as required by the rules of the Labor Department.

Fourth. The illegal character of the relator's arrest on or about April 4th, 1924, the unfair nature of the hearing accorded the relator, as hereinabove set forth and otherwise, and the issuance of a warrant of deportation thereafter without any evidence in the record in support of the findings therein contained, each separately, and all collectively, deprived and still do deprive the relator of life, liberty and property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

Fifth. That at the hearing on the said warrant of arrest held on or about the 27th day of August, 1924, the government, in accordance with the provisions of Sec. 23 of the Immigration Act of 1924, placed upon the relator the burden of proving that he had entered the country legally. That the relator admittedly entered the country on December 1st, 1923. That the Immigration Act of 1924 did not go into effect until July 1st, 1924, and its application to the relator

necessitated construing said act as an ex post facto law in violation of Subdivision 3 of Section 9 of Article I of the Constitution of the United States.

Sixth. On November 29th, 1924, the Board of Review reported with reference to the relator:

"It is believed that the quotations from this document clearly show that the author believes in the overthrow of government and all forms of law by force or violence.

"The refusal of the alien to answer, at the advice of his Attorney, does not prevent the alien's deportation under the charges named in the warrant. The U. S. Supreme Court in the case of Bilokumsky v. [fol. 15] Tod, 263 U. S. p. 149 says 'Conduct which forms the basis for inference is evidence. Silence is often evidence of the most persuasive character.'

"In view of his refusal to answer the questions propounded to him in order to show cause why he should not be deported, it must be taken for granted that the alien is the author of the passages quoted."

Inasmuch as the examination of the relator was held in Chicago, Illinois, and inasmuch as the answers to the questions put to the relator might possibly have made him liable to prosecution under Sections 558-564 of the Illinois Criminal Code (Rev. Stat. of Ill., Chap. 38), the holding of the Board of Review that the relator's refusal to answer such questions was evidence warranting deportation deprived the relator of the protection against self-incrimination guaranteed to him by the Fifth Amendment to the Constitution of the United States.

Seventh. The holding of the Board of Review misconstrued the decision of the United States Supreme Court in Bilokumsky v. Tod (263 U. S. 149), which said misconstruction constituted error of law.

Eighth. The relator alleges that the return and annexed record do not show facts sufficient to warrant the detention of the relator.

Wherefore the relator prays that he may have his liberty.

Emanuel Vajtauer, by Isaac Shorr, Attorney. Isaac Shorr, Attorney for Relator.

Office & P. O. Address: 80 East 11th Street, Borough of Manhattan, City of New York.

[fol. 16] Sworn to by Isaac Shorr. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 17] EXHIBIT IN EVIDENCE—PROCEEDINGS BEFORE U. S. DEPARTMENT OF LABOR, IMMIGRATION SERVICE

UNITED STATES DEPARTMENT OF LABOR, IMMIGRATION SERVICE

Copy

Office of Inspector in Charge, Chicago, Ill.

(Received Feb. 20, 1924.)

The Immigation Bureau, Pontiac Building, Dearborn & Harrison Streets, Chicago, Ill.

GENTLEMEN: A Dr. E. Vajtauer of Prague, a Czechoslovak Communist Leader and a delegate to the III Inter. Congress in Moscow 1922, arrived in New York the first week in December, 1923, and was released from Ellis Island pleading the purpose of his coming here was the studying of psychology. I wish to state that he came here under a false pretense as it was openly stated by J. Martinek, edictor of the social-democratic "Delnicke Listy" Jan. 9th, 1924 that Vajtauer was brought here by the Board of Directors of the Bohemian Comm. daily "Spravedlvost" in Chicago, 1825 So. Loomis Str. This paper had its permit withdrawn during the war for adding confort to the enemy.

Vajtauer's expenses were paid by the "Spravedlost" and he was secretly authorized by the III Inter. in Moscow to try to develop unrest among Bohemian workers during the election year. He was immediately appointed editor in chief of the "Spravedlvost" according to the instructions of the III Inter. in Moscow. He was advised to take out his first citizenship papers to be able to travel and to work in all the large industrial centers for the III International and its mouthpiece the "Spravedlvost."

I am a member of a Bohemian Trade union and I know from experience how the members are compelled to subscribe to the communist papers. Vajtauer is in the "Spravedlvost," 1825 So. Loomis Str. every day between 9 A. M.-2 P. M. Every other Friday he is speaking at a meeting in the "Spravedlvost" (8 P. M. next Friday) inciting the people against the Government and convincing them that their only hope is the communist working party of America, who will force the people from the capitalist oppression.

I have no personal grudge against him, I only want fair play for Uncle Sam to whom I am indebted for everything. I also cannot divulge my name, which would mean a bullet for me. I even had this letter written by my daughter.

Investigate and see if I am right or not.

(Signed) A Union Man.

The board of Directors meets with Vajtauer Wed. Feb. 20th, 8 P. M. at the "Spravedlvost" office, 2d floor, entr. from 18th Place.

[fol 18] U. S. Department of Labor, Immigration Service

98905-244 (2050-385).

Ellis Island, N. Y. H., March 4, 1924.

District Director, U. S. Immigration Service, Chicago, Ill.:

I hereby certify that the following is a correct record and statement of facts relative to the admission to the United States of the alien named below:

(1) S. S. Minnekahda; line, White Star;
(2) Date arrival, December 1, 1923; manifest No. 3-30; Class III;
(3) Port at which admitted, New York, N. Y. Antwerp;
(4) Name, Emanuel Vajtauer; age 31; sex, M.;
(5) Married, M; occupation, Redact; able to read and write, yes;
(6) Native of Czechoslovakia; race Slovak;
(7) Last permanent residence, Prag., Czechoslovakia; father Filip Vajtauer; Jindric at Praq. Luv.
(8) Destination, Seacaucus, N. J.;
(9) By whom passage paid, self; money brought, $80;
(10) Whether in U. S. before, No; when, ——; where, ——.
(11) To whom going Cousin Dr. Jaroslav Hulba, c/o Tuberculosis Hospital, Seacaucus, N. J.; condition of health;
(12) Height, 5′ 6″; complexion, fair; color of hair, Dark;
(13) Color of eyes, Blue; identification mark, Limping;
(14) Place of birth, Tabor, Czechoslovakia; examined by inspector Flannery;
(15) How admitted, S. I. #6; accompanied by ——.
(16) Remarks: Admitted December 5, 1923 -36- JJM.

(Signature:) For the Commissioner, Wm. Flunn, (Official title:) Chief of Record Division.

[fol. 19] Application for Warrant of Arrest—Section 19 of the Act of February 5, 1917

U. S. Department of Labor, Immigration Service

2050/385.
(Received, March 11, 1924, Law Division.)

(Place:) Chicago, Ill, March 7 1924.

The undersigned respectfully recommends that the Secretary of Labor issue his warrant for the arrest of Emanuel Vajtauer, age 31, native and citizen of Czecho-Slovakia, who entered the United States at New York Dec. 1, 1923, per S. S. "Minnekahda" the alien named in the attached certificate, upon the following facts which the under-

signed has carefully investigated, and which, to the best of his knowledge and belief, are true:

(1) (Here state fully facts which show alien to be unlawfully in the United States. Give sources of information, and, where possible, secure from informants and forward with this application duly verified affidavits setting forth the facts within the knowledge of the informants.)

Copy of the anonymous letter herewith indicates that the alien is editor of a Communist paper in Chicago and that he advocates the overthrow of the government by force or violence.

Report of the Fourth Congress of the Communist Internationale held Nov. 7th to Dec 3, 1922 shows that the alien was a delegate and spoke at said Congress. Extract from report of said Congress being a report of a speech made by the alien at the Congress, is enclosed.

Warrant of arrest is requested on the grounds "Anastate," "Disbeliever," "Anarchize," "Universal."

Certificate of admission herewith.

4. W/A: Issue: Anastate, Disbeliever, Anarchize Universal. Own. AJS.

(2) The present location and occupation of above named alien, are as follows: 1825 So. Loomis Street, Chicago, Ill.

Pursuant to Rule 22 of the Immigration Regulations there is attached hereto and made a part hereof the certificate prescribed in subdivision 2 of said Rule, as to the landing or entry of said alien, duly signed by the immigration officer in charge at the port through which said alien entered the United States.

(Signature:) Howard D. Eby, (Official title:) District Director.

HDE-E.
Incl. 45921.

[fol 20] Warrant—Arrest of Alien

United States of America, Department of Labor, Washington

No. 55119/145

To District Director of Immigration, Chicago, Illinois, or to any Immigrant Inspector in the service of the United States:

Whereas, from evidence submitted to me, it appears that the alien Emanuel Vajtauer, who landed at the port of New York, N. Y., ex S. S. "Minnekahda" on the 1st day of December, 1923, has been found in the United States in violation of the Act of October 16, 1918, as amended by the Act of June 5, 1920, and for the following among other reasons: That prior to or at the time of his entry he believed in, advised, advocated, or taught the overthrow by force or violence of the Government of the United States or of all forms of law; that prior to or at the time of his entry he wrote, published, or caused to be written or published, or who knowingly

circulated, distributed, printed, or displayed or who knowingly had in his possession for the purpose of circulation, distribution, publication, or display, written or printed matter, advising, advocating or teaching opposition to all organized government; and that prior to or at the time of his entry he wrote, published or caused to be written or published, or who knowingly circulated, distributed, printed, or displayed, or who knowingly caused to be circulated, distributed, printed, published or displayed, or who knowingly had in his possession, for the purpose of circulation, distribution, publication, or display, written or printed matter, advising, advocating, or teaching the overthrow by force or violence of the Government of the United States or of all forms of law,

I, E. J. Henning, Assistant Secretary of Labor, by virtue of the power and authority vested in be by the laws of the United States, do hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law.

The expenses of detention hereunder, if necessary, are authorized, payable from the appropriation "Expenses of Regulating Immigration, 1924. Pending further proceedings, the alien may be released from custody upon furnishing satisfactory bond in the sum of $1,000.00.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 4th day of April, 1924.

(Signed) E. J. Henning, Assistant Secretary of Labor.

REM. EFH.

[fol. 21] U. S. Department of Labor, Immigration Service

Chicago File No. 2050/385

Report of Hearing Accorded Alien Emanuel Vajtauer under Department Warrant of Arrest No. 55119/145, Dated April 4th, 1924, at U. S. Immigration Office, Chicago, on the 14th Day of May, 1924, by C. P. Paul, U. S. Immigrant Inspector

Minutes of Hearing Taken by Marion Ennis; Transcribed by Marion Ennis

Said alien being unable to speak and understand the English language satisfactorily, an interpreter John Dianish, 5526 West 24th Street, Cicero, Ill., competent in the Czecho-Slovak Bohemian language, the language spoken and understood by the alien, was employed (being first duly sworn, if not an official interpreter of the U. S. Immigration Service).

The examining inspector then made the following statement to the alien:

"I show you, and ask you to read, a warrant issued by the Hon. Secretary (or Acting Secretary) of Labor of the United States for your arrest, to afford you an opportunity to show cause why you

should not be deported from the United States for the reasons set forth in the warrant and any other reasons which may appear as your hearing proceeds."

The warrant was then offered to the alien for his (or her) inspection.

By examining inspector:

Q. Have you read the warrant and do you fully understand the nature of this proceeding?
A. Yes.
Q. You are advised that you have the right to be represented by counsel at this hearing. Do you wish to be so represented?
A. Yes.
Q. (If foregoing question is answered in the affirmative.) Who is your attorney?
A. Samuel H. Holland, 1807 Burnham Building, Chicago.
Q. (To attorney:) Do you represent this alien and are you ready to proceed with this hearing at this time?
A. Yes.
Q. (If alien does not wish to be represented by counsel.) Do you waive all right to counsel and are you ready to proceed with the hearing at this time?
A. ——.

[fol. 22] The alien was then duly sworn, and gave the following testimony:

Q. What is your full, true and correct name?
A. Emanuel Vajtauer.
Q. By what other names have you been known?
A. None.
Q. What is your complete address?
A. 2306 South 58th Court, Cicero, Ill.
Q. What is your occupation?
A. My occupation is Doctor of Psychology. At present I am the Editor of the "Spravedlvost" a Bohemian newspaper located at 1825 So. Loomis Street.
Q. Can you read and write?
A. Yes.
Q. Are you married or single?
A. Married.
Q. If married, what is the name and address of your wife?
A. Anna Vajtauer. She is in Prague, Czecho-Slovakia.
Q. Are you dependent upon your husband (or wife) for support?
A. ——.
Q. Is she dependent upon you for support?
A. Yes.
Q. If you are deported what provision will be made for other members of family?
A. ——.
Q. What baggage and valuables have you, and where are they?

A. Personal belongings at the place where I live.

Q. When and where were you born (municipality, county or province, country)?

A. Dec. 23, 1892 at Tabor, Czecho-Slovakia.

Q. Of what country are you a citizen at the moment of this hearing?

A. Czecho-Slovakia.

Q. On what do you base your claim to such citizenship?

A. Birth.

Q. Have you been naturalized as a citizen of the United States? If so, when and where?

A. No, but I have my first papers.

Q. Where was your father born?

A. Czecho-Slovakia.

Q. Has he been naturalized as a citizen of the United States? If so, when and where?

A. No.

Q. Where was your husband born?

A. ——.

Q. Where was your husband's father born?

A. ——.

[fol. 23] Q. Have either of them been naturalized as citizen- of the United States? If so when and where?

A. ——.

Q. When did you last enter the United States and where? Give full details of time, place and manner of entry. (Compare alien with verification of landing.)

A. 1st of December 1923 per S. S. "Minnekahda" of the White Star Line landed at New York.

Q. If you entered from Canada, following arrival from country other than United States, give time and place of landing in Canada; name of steamer; were you (or your father or your husband) naturalized as a citizen of Canada, and if so give name of court, date and place; give name and addresses of place where you worked and lived in Canada, and names and addresses of people who can satisfy Canadian Immigration Officials that you resided in Canada from date of landing there to date of departure. (Get full information.)

A. ——.

Q. Did you ever live in the United States prior to your yast entry? If so when and where?

A. No.

Q. Have you a passport? (Attach copy to record of quota in full in record.)

A. Yes. (Attorney for the alien states he has the passport in his office and will produce it.)

Q. Give names and addresses of relatives to whom you wish to go if deported.

A. Anna Vajteaur, 1030 Plinarni Street, Prague, Czecho-Slovakia.

Description: Age, 32; Height, 5 ft. 5 in.; Weight, 140; Forehead, high; Eyes, blue; Mouth, small; Chin, pointed; Hair, light brown; Complexion, fair; Face, thin; Nose, long; Marks, ———.

[fol. 24] Inspector Paul to the alien, Emanuel Vajtauer:

Q. Why did you come to the United States?

By the attorney for the alien: I will advise the alien not to answer any further questions until the evidence upon which the warrant is based will be presented here.

Inspector Paul to the alien:

Q. Your attorney advises you to refuse to answer further questions. Do you refuse in compliance with his advice?
A. I will go by my attorney's advice.

Inspector Paul to the Interpreter:

Q. I have in my possession a pamphlet with the name of Dr. E. M. Vajtauer. Examine and state what that pamphlet is and deals with.
A. Well, it is Dr. Vajtauer's pamphlet from the Revolution and the Dictatorship of the proletariat. This pamphlet is merely a study of the Russian revolution. It was written in 1920 and deals with the problem of the Russian people who overthrew the Government of the Romanoffs and established the Communist government over there.
Q. Have you translated portions of that pamphlet?
A. Yes, sir, I did.
Q. Is this the translation made by you? (Indicating Exhibit "B.")
A. Yes, partly, only extracts.

By Inspector Paul: A pamphlet in its original form and wtih translations is introduced in evidence and made a part of the record of this hearing, marked Government Exhibit "A"——
By the attorney for the alien: Of course I object to the introduction of both the pamphlet and the translation as not being properly identified.

By Inspector Paul to the interpreter:

Q. Are you familiar with the language in which this pamphlet is written?
[fol. 25] A. Yes, sir.
Q. And is this the translation made by you of the same?
A. Yes, sir.

Inspector Paul to the respondent:

Q. Is that your name on the h-ad of the pamphlet?

By the attorney for the alien: I have instructed the alien not to answer any questions until the entire evidence upon which the warrant is based will be presented.

By Inspector Paul to the alien:

Q. I will read the translation as it appears on page 7:

"The Communists explained that all wrongs originated from the greed of the capitalists, and that it is necessary to overthrow the governments of the greedy Bourgeoise. The poor people should rule themselves in order to have bread and peace."

Are you the author of that passage?

By the Attorney: I have instructed him not to answer any questions at this hearing until the evidence is presented.

By Inspector Paul:

Q. I read from page 15 a translation made by a competent and qualified interpreter in Russian:

"Only when you kill the Bourgeois capitalist, only then you will be free. By this kind of primitive logic it is usually necessary to lead the revolting soldier in order that he should not unnecessarily sacrifice himself and others."

Are you the author of that passage?

By the attorney: I will advise him not to answer this question.

Inspector Paul to the interpreter:

Q. This paper I show you I will ask you to identify the same, state what it is?

A. This is a semi-weekly paper published by the Slovak Labor Socialist Federation of America.

Q. Published where?

A. In Chicago, Illinois.

Q. Who is the editor?

A. John Vrabel.

[fol. 26] Q. Is there an article in that publication written by the respondent?

A. No it is not written by him. It merely has his name appearing there.

Q. What is said of him in that article?

A. It said that Dr. Vajtauer is the editor of the Bohemian Daily "Spravedlvost".

Q. Is this the paper that he is connected with?

A. No not this.

Q. Is that the only reference made of him in that paper?

A. That is all there is here.

Inspector Paul to the alien:

Q. Did you deliver a speech at the "Spravedlvost" Hall at a meeting held on March 21, 1924 in Chicago?

By the attorney: I shall advise him not to answer.

By Inspector Paul: I introduce in evidence and make a part of the record of this hearing translation made by a competent interpreter of said speech made by Dr. Vajtauer on March 21st, 1924 marked "Exhibit "B".

By the Attorney: I object to the introduction of the copy of the speech as not being properly made.

By Inspector Paul: Make your objections in your brief.

Inspector Paul to the respondent:

Q. I have before me what purports to be the "Fourth Congress of the Communist International. Abridged Report of Meetings held at Petrograd and Moscow Nov. 7, Dec. 3, 1922, published for the Communist International by the Communist Party of Great Britain 16, King Street, Covent Garden, W. C. 2 and I read therefrom: a statement purporting to have been made by the respondent, Dr. Vajtauer, Czecho-Slovakia:

"I propose for the moment to say a few words only anent Comrade Zinoviev's speech concerning Czecho-Slovakian affairs. Yesterday Zinoviev passed judgment on the Czecho-Slovakian question. We were very much surprised that as chairman of the International he had not taken the trouble to gather his information from both sides. He only knows the way to Comrade Smeral, whose touch these observations betray. But what will our workers think when they read Zinoviev's speech, and when they note the points in it which directly conflict with the truth? Zinoviev says that in Czecho-Slovakia the united front has been established in exemplary fashion. Exemplary, indeed, Comrades! The upshot has been that the Party has been completely rent in twain, and the two parts are both incompetent for the struggle.

[fol. 27] "We are told that the opposition trend is towards anarchism. (Hear, hear.) For all the expelled local organizations and trade unions to organize a great industrial union, is anarchism? When they devote themselves to trade union work in order to protect the unions from the opportunists and in order to carry out detail work, this is anarchosyndicalism? To proclaim a general strike is K. A. P. D.-ism (Kommunist-Arbeiter-Partei-Deutschlands)? The wish to make of the Party a fighting force is anarchismonce more?

"Comrade Zinoviev has been good enough to tell us that our case is not on all-fours with that of Paul Levi. We have this much to say to Comrade Zinoviev: Not merely was there no resemblance between our case and that of Levi; there was no breach of discipline at all. It is the sacred duty of the workers to draw attention to the dangers threatening the Party. It is a sacred duty to steer clear of

political chicanery. That is what we did, and we want to let Comrade Zinoviev know that if those be breaches of discipline, we shall commit them just as often as an attack is made on the Party."

Inspector Paul to the alien:

Q. Are you the author of these remarks at the Convention held at Moscow?

By the attorney: I will advise him not to answer this question.

By Inspector Paul: The purpose of my reading from the report of the Fourth Congress of the Communist International is to show that Dr. Vajtauer was a delegate and participated in and took part in the said Congress.

Inspector Paul to the alien:

Q. Do you belong to the Communist Party?

By the attorney: I will advise him not to answer this question.

By Inspector Paul to the attorney:

Q. This is the Government's case. Do you desire to introduce any testimony?

A. I desire to peruse the Exhibits before I will decide whether I will permit the respondent to testify.

Inspector Paul: The record will be written up and the Exhibits will be subject to your perusal.

Inspector Paul to the alien: The bond upon which you are now released, will be in effect until the case is finally disposed of.

[fol. 28] [Exhibit A is a pamphlet in a foreign language consisting of 46 pages and a front cover fastened together with brass fasteners.]

[fol. 29] (Copy)

Revolution and the Dictatorship of the Proletariat

By Dr. E. Dajtauer

Written in Moscow in the Spring of 1920

Translation Exhibit "A"

Extracts

Page 5:

By terror, and by discipline, much stronger than that of Czar, several thousand adherents of the party were able to conquer the nation, amounting to 180,000,000 people.

Page 7:

The Communists explained that, all wrongs originate from the greed of the capitalists, and that it is necessary to overthrow the government of the greedy bourgeoisie. The poor people should rule themselves in order to have bread and peace.

Page 9:

Bolsheviks were the only ones who understood the real situation. The soldier, worker, and farmer found a friend in the bolshevik and the only leader, and despite that their names were besmeared, despite that they were told that bolsheviks are agents of Germany, the soldier understood, that they are the only ones who are willing to give him what he desires, and that is: bread and life, land and peace. Should bolsheviks retire at that time the same as mensheviks and essers, the change would go over their heads. The revolution was advancing from below. The bolsheviks only played the role of midwife, in order to assume later the role of nurse.

Page 15:

Only when you kill the bourgeois-capitalist, only then you will be free. By this kind of primitive logic it is usually necessary to lead the revolting soldier, in order that he should not unnecessarily sacrifice himself and others.

Page 24:

During the attack, the revolution must be merciless. It must destroy the old system, not leaving even a single stone unturned.

[fol. 30] Page 36:

The people, who suffered too long, will knock to the ground the socialist traitors and bourgeois, and will punish with death any attempt of resistance. They have a right to do that! Others have killed millions of their brothers previously. The lowest, the most suffering class of people has seized the rule into its own hands. It took away every chance of the murderers for further oppression and crime. It dictates quietly to the farmer vampires. It carries on the dictatorship of the proletariat!

This is the first problem of the proletarian dictatorship, and that is to capture the murderers and traitors of the people, the imperialists, militarists capitalists, bourgeoisie and social-democrats and prevent them from committing any further crimes.

Page 42:

Should the Bohemian worker have as much courage as the Russian worker has, he would see quickly the necessity of seizing the rule of factory into his own hands and expel/ the owner of the factory, who has no right to own the property of the factory. The plant, which is to supply the needs of the people, belongs to the people, and must be

run only by the people, only by the working people. The means of production are not a private property, they are the peoples's property. Private property is only a masked loot of people's property. The government, which recognizes private property, is the government which recognizes the looting the people, and how the robbers are treated? They are treated so that they are not given chance to loot. The robber should be locked up, irons should be put on his wrists, and guard placed to watch him. The Russian proletariat, being thought through life experience about the truth, that private property is robbery, knocked down the government and put the old robber, rich man capitalist under armed guard.

Page 46:

Revolution is a sudden expansion of the people, which suddenly abolishes the injustice piled for centuries. The proletarian dictatorship is an armed guard of liberties gained by revolution.

[fol. 31] EXHIBIT "B"

(Copy)

Report of a Speech Held by Dr. Vajtauer March 21, 1924

The speaker opened his lecture by giving the outline of conditions in the European countries, which conditions led toward the world war. The speaker accused the international capitalists to be responsible for the war he also condemned the 2nd International for being too cowardly, he said, that the proletariat of Germany, Austria and the other countries, should have risen as one man and declared a general strike, in order to prevent the war. He praised the proletariat of Russia, as being the only one to raise a protest against the said war.

After describing the horrors of war, the speaker pointed out, that at the end of the war, when the wearying masses returned from the front in chaos, they brought their arms with them, and at that time, when the whole proletariat was armed, and when the capitalistic power was very weak, then the moment was close at hand when the proletariat could easily seize the power and declare itself master of situation; they could seize the factories, national wealth and everything that is now in the hands of the capitalistic class. He points out further, that this moment was overlooked on account that the proletariat allowed itself to be misled by sweet but false promises of the possessing class.

In regard to the United States, the speaker said, the rivers of blood which flowed in the battlefields of Europe, were really the rivers of gold for the United States, these rivers of gold flowed into the United States in the sense of large orders of war material for the European countries, and these rivers of gold, in due time, would once more change into rivers of blood in this country, he mentioned that the present prosperity in the United States is a false one, and will not last long, because the European countries are unable to

purchase the American goods, on account of deflation of their finances, in order to be able to purchase the American goods, these countries are forced to make further loans in America, and by doing this these countries make themselves vassals to America.

Pointing out the proletariat of America, the speaker said, that when the time comes when the American proletariat, which have tasted a bit of the capitalistic luxuries, will find itself deprived of these luxuries, then the American proletariat will be much more revolutionary than that of Europe, it is hard to preach revolution to the full stomach, but once this stomach is empty, it revolts, and seeks the means to obtain the supplies. The speaker pictured the American proletariat as a mole, which got hold of a bone thrown from the capitalistic table, to satisfy the hunger of this mole. He predicted much fiercer revolutionary struggle in this country than that which took place in Europe, much more blood will be shed in this country than was shed in Europe.

Toward the end of his speech, the speaker predicted, that the next large war will be between the European countries and America, because America being a creditor, would in due time demand the payment of debt from debtors, and these being poor, would try to repudiate the American debt, this naturally would lead to war, and it would be up to the proletariat to stop the war of this kind, because the proletariat once more would be asked to supply the army. [fol. 32] The speaker pointed out the Communistic government of Russia as an example for the proletariat of the other countries of the world, further he said, that there is a probability of another great war and this war may be the war between the United States Proletariat countries of Europe, against the capitalistic America, and then the proletariat of America would find itself in the position, either to fight the proletariat of Europe, or else fight against its own capitalists, and it is up to the conscientious leaders of the proletariat to prepare the workers for this fatal moment.

[fol. 33] U. S. Department of Labor, Immigration Service

Chicago File No. 2050/385

Continued Hearing in the Case of Emanuel Vajtauer, Department Warrant of Arrest No. 55119/145, Dated April 4, 1924, Held at U. S. Immigration Office, Chicago, Ill., This 27th Day of August, 1924, Before Inspector C. H. Paul.

Present: Emanuel Vajtauer, represented by his attorney, Samuel Holland.

Minutes of Hearing Taken by Marie Prendergast

Mr. Paul to Attorney Holland: Mr. Holland, the case of Emanuel Vajtauer was practically closed on the 14th day of May, 1924. Subsequent to that time, there has come to the hands of the Gov-

ernment, other exhibits and the law of May 26, 1924 has become operative and gone into effect. The law provides that it is incumbent upon this and all aliens to affirmatively show their right to enter the United States. I will read section 23.

Mr. Paul reads Section 23:

"Whenever any alien attempts to enter the United States, the burden of proof shall be upon such alien to establish that he is not subject to exclusion under any provision of the Immigration laws and in any deportation proceedings against any alien the burden of proof shall be upon such alien to show that he entered the United States lawfully and the time, place and manner of such entry into the United States, but in presenting such proof, he shall be entitled to the production of his immigration visa, if any, and of any other documents concerning such entry in the custody of the Department of Labor."

Mr. Paul to Attorney Holland:

Q. Do you desire to place the alien under oath and permit his examination?

A. No, I will file a supplemental brief in ten days or two weeks.

Q. Do you desire the record forwarded to you any further?

A. I do not desire it.

Q. Have you the alien's passport?

A. I want to introduce the passport on behalf of the alien, with the understanding that we may have it back whenever it may become necessary. I want to introduce that as an exhibit on behalf [fol. 34] of the alien.

By Mr. Paul: Passport of the alien is introduced in evidence and made a part of the record of this hearing.

Mr. Holland to Mr. Paul: And at this time, Mr. Inspector, I would ask that any affidavits or documents that may be in the possession of the Department of Labor, in connection with the entry of the alien to the United States, may be made a part of this record, if there are any.

Mr. Paul to Mr. Holland: If there are such documents, and I am of the opinion that there are not any such documents, he having entered the United States prior to the 1st of July, 1924, the request shall be complied with.

Mr. Paul to Mr. Holland: The bond in force will still remain in force.

[fol. 35] U. S. Department of Labor, Immigration Service

In answering refer to No. 2050/385,

Office of Inspector in Charge,
Chicago, Ill., September 20, 1924.

District Director of Immigration, Chicago, Illinois:

There is submitted herewith record of hearing accorded one Emanuel Vajtauer under Department Warrant of Arrest #55119/145, dated April 4, 1924.

This young man entered the United States at New York on the S. S. "Minnekahda" on the 1st of December 1923. He is charged with believing in the overthrow of the government by force or violence and teaching the same, with numerous other reasons under the Act of October 16, 1918 as amended by the Act of June 5, 1920. The case came on for hearing under the Act of June 5, 1920; and upon advice of counsel he refused to answer questions although documentary evidence in the nature of exhibits, offered at this hearing, strongly indicated that he belonged to the radical class and comes within the purview of the law.

Subsequent to the present immigration law, which went into effect July 1, 1924, he was recalled and directed as provided by that law to affirmatively show his right. His attorney again refused to permit him to answer questions but submitted his passport. In my judgment, this man is a radical of the radicals, and I therefore recommend he be returned to the country whence he came.

(Signed) C. H. Paul, Immigrant Inspector.

CHP:M.

[fol. 36] U. S. Department of Labor, Immigration Service

Refer to No. 2050/385.
Nov. 3, 1924, Mail and files.
(Nov. 4, 1924, out.)

Chicago, Ill., Oct. 29, 1924.

Commissioner General of Immigration, Washington, D. C.:

In re Emanuel Vajtauer

(1) Referring to Bureau file No. 55119/145, I beg to forward herewith record of hearing accorded by Inspector Paul to the alien, Emanuel Vajtauer, age 32, native and citizen of Czecho-Slovakia, who entered the United States at New York December 1st, 1923 per S. S. "Minnekahda". Hearing was held at Chicago, Illinois, May 14, 1924, and August 27th, 1924 on th*d* charges "Antagonal" "Disbeliever", "Anarchize" and "Educator."

2. Warrant was read to the alien.

3. The alien was advised of his right to counsel, Attorney Samuel H. Holland, appearing in his behalf.

4. The alien upon advice of counsel refused to answer any questions. Extract from the report of the Fourth Congress of the Communist International shows that the alien was a delegate to the said Communist Convention held at Petrograd and Moscow Nov. 7th, to Dec. 3rd, 1922. Government Exhibit "A" purporting to have been written by the alien advocates the overthrow of government by force and violence. A speech made by the alien covered in Government Exhibit "B" is revolutionary in its nature.

5. The alien is at large on bond.

6. I believe that the warrant charges are sustained by the record. I therefore beg to concur in the finding of the Examining Inspector and to recommend that a warrant of deportation issue.

(Signed) Howard D. Eby, District Director.

HDE-E.
Incl. 44574.

[fol. 37] 55119/145—Chicago.

November 19, 1924.

In re Emanuel Vajtauer, 32, M., Native of Czecho Slovakia

This case comes before the Board of Review on warrant proceedings.

No hearing or appearances.

This case came to the attention of the District Director of Chicago, Illinois by means of an anonymous letter stating that Doctor Vajtauer of Prague, Czecho Slovakia, Communist Leader, was in this country in violation of law, and in that he was spreading communistic doctrines at meetings in Chicago.

After investigation, the Chicago Office applied for a warrant of arrest, which was issued on April 4, 1924. A hearing was granted the alien on May 14, 1924 and on August 27, 1924. At the hearing on the warrant of arrest, the alien was represented by Attorney Samuel H. Holland.

At the time of the hearing there was introduced as evidence two pamphlets, one being the report of the Fourth Congress of the Communist International which shows that the alien was a delegate to the Communist Convention held at Petrograd and Moscow from November 7th to December 3, 1922. Page 39 of said pamphlet contains a report of the remarks of the alien at the Convention in response to a speech made by one, Zinovev. There is also a pamphlet marked Exhibit "A" on the Revolution and Dictatorship of the Proletariat written by Dr. E. M. Vajtauer. An extract, which is given on page 7, is translated and reads as follows:

"The Communist explained that all wrongs originated from greed of the capitalists, and that it is necessary to overthrow the govern-

ments of the greedy Bourgeoise. The poor people should rule themselves in order to have bread and peace."

The alien was asked whether he was the author of that passage. The Attorney replied that he had instructed him not to answer any questions at the hearing until the evidence is presented. Another translation from page 15 reads as follows:

"Only when you will kill the Bourgeois capitalist, only then you will be free. By this kind of primitive logic it is usually necessary to lead the revolting soldier in order that he should not unnecessarily sacrifice himself and others."

The alien was asked whether he was the author of this passage but the Attorney advised him not to answer this question.

[fol. 38] The alien was asked whether he was the author of the remarks noted on page 39 of the report of the Fourth Congress of the Communist International made by one, Vajtauer, which was read to the alien. The Attorney again advised him not to reply to this question. The alien also, on the advise of his Attorney, refused to answer the question as to whether he belonged to the Communist Party.

Another extract from Exhibit "A" was translated and reads as follows:

"During the attack the revolution must be merciless. It must destroy the old system, not leaving a single stone unturned."

Page 36 contains the following:

"The people, who suffered too long, will knock to the ground the social traitors and bourgeois, and will punish with death any attempt of resistance. They have a right to do that! Others have killed millions of their brothers previously. The lowest, the most suffering class of people has seized the rule in its own hands. It took away every chance of the murderers for further oppression and crime. It dictates quietly to the former vampires. It carries on the dictatorship of the proletariat!

This is the first problem of the proletarian dictatorship, and that is to capture the murderers and traitors of the people, imperialists, militarists capitalists bourgeoisie and social democrats—and prevent them from committing any further crimes."

It is believed that the quotations from this document clearly show that the author believes in the overthrow of government and all forms of law by force or violence.

The refusal of the alien to answer, at the advice of his Attorney, does not prevent the alien's deportation under the charges made in the warrant. The U. S. Supreme Court in the case of Bilokumsky vs. Todd, 263 U. S., page 149 says: "Conduct which forms the basis for inference is evidence Silence is often evidence of the most persuasive character."

The record in this case clearly shows that this man is an alien In view of his refusal to answer the questions propounded to him in order to show cause why he should not be deported, it must be taken for granted that the alien is the author of the passages quoted. [fol. 38a] Aside from the quotations in the pamphlet noted above, there was also introduced in the record the report of the speech made by Dr. Vajtauer on March 21, 1924 in Chicago. The speech was not reported in its entirety. A summary merely has been given. The gist of this address, as shown by the report, clearly indicates the revolutionary ideas of this alien. The evidence in this case is sufficient to sustain the charges named in the warrant of arrest.

The Board of Review therefore recommends that the alien be deported to Czecho Slovakia at the expense of the S. S. Company on the grounds named in the warrant of arrest.

(Signed) W. N. Smelser, Chairman, Secy., & Comr. Gen'l Board of Review.

JLB:EY.

So ordered: (Signed) Robe Carl White, Second Assistant Secretary.

(Received November 20.)

[fol. 39] U. S. Department of Labor, Bureau of Immigration, Washington

In answering refer to No. 55119/145.

November 28, 1924.

District Director of Immigration, Chicago, Illinois.

Sir: The Bureau acknowledges the receipt of your letter of October 29, 1924, No. 2050/385, transmitting record of hearing accorded the alien Emanuel Vajtauer who landed at the port of New York, N. Y., ex S. S. "Minnekahda" on December 1, 1923.

After a careful examination of the evidence submitted in this case, the Department is of opinion that the alien is in the United States in violation of law. You are therefore directed to cause him to be taken into custody and conveyed to New York, N. Y., for deportation, the expenses incident to such conveyance, including the employment of an attendant to assist in delivery, if necessary, at a nominal compensation of $1.00 and expenses both ways, being authorized, payable from the appropriation "Expenses of Regulating Immigration, 1925."

Conveyance of the alien to New York, N. Y., in connection with a party, should be deferred until definite arrangements for his return to Czecho-Slovakia have been made by the Ellis Island office, which will furnish you with sailing advices.

Respectfully, (Signed) Robe Carl White, Acting Commissioner General, Nov. 28, 1924.

Approved: (Signed) Robe Carl White, Nov. 28, 1924.

Mail and files.
Inclose W. D. No. 2725.

[fol. 40] Warrant—Deportation of Alien

No. 55119/145. Enc. 2725.

United States of America, Department of Labor, Washington

To Commissioner of Immigration, Ellis Island, N. Y. H., or to any officer or employe of the United States Immigration Service:

Whereas, from proofs submitted to me, after due hearing before Immigrant Inspector C. H. Paul, held at Chicago, Illinois, I have become satisfied that the alien Emanuel Vajtauer who landed at the Port of New York, N. Y., ex S. S. "Minnekahda," on the first day of December, 1923, has been found in the United States in violation of the Act of October 16, 1918, as amended by the Act of June 5, 1920,

That prior to or at the time of his entry he believed in, advised, advocated, or taught the overthrow by force or violence of the Government of the United States, or of all forms of law; that prior to or at the time of his entry he wrote, published, or caused to be written or published, or who knowingly circulated, distributed, printed, or displayed, or knowingly caused to be circulated, distributed, printed, published, or displayed, or who knowingly had in his possession for the purpose of circulation, distribution, publication, or display, written or printed matter, advising, advocating, or teaching opposition to all organized government; and that prior to or at the time of his entry he wrote, published, or caused to be written or published, or who knowingly circulated, distributed, printed, published, or displayed, or who knowingly caused to be circulated, distributed, printed, published, or displayed, or who knowingly had in his possession for the purpose of circulation, distribution, publication, or display, written or printed matter, advising, advocating or teaching the overthrow by force or violence, of the Government of the United States or of all forms of law; and may be deported in accordance therewith:

I, Robe Carl White, Acting Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to return the said alien to Czecho-Slovakia, the country whence he came, at the expense of the steamship company importing him. Delivery of the alien and acceptance for deportation will serve to cancel the outstanding release bond.

For so doing, this will be your sufficient warrant.

Witness my hand and seal this 28th day of November, 1924.

Robe Carl White, Acting Secretary of Labor.

File- December 12, 1924. R. R. Beard.
Mail and files.

[fol. 41] Department of Labor, Office of the Assistant Secretary, Washington

No. 56119/145. March 7, 1925.

The Honorable the Attorney General, Department of Justice.

My Dear Mr. Attorney General: This department has the honor to refer to your letter of February 10, 1925, No. 30-51-111-1, WJD-FMP, and transmitted herewith for the use of the United States Attorney the exhibit referred to in his communication of February 4, 1925. This exhibit was inadvertently overlooked when the file was certified for use in habeas corpus proceedings.

It is noted that Honorable Augustus N. Hand, United States District Judge, has reserved decision pending filing of briefs. It is further noted that the United States Attorney is of the opinion that the record is very weak.

The Department is unable at present to make any suggestions, but in the event that the decision is unfavorable to the Government, the matter will be carefully considered with a view to determining whether it should be appealed, when the original record is returned with a copy of the Court's decision, together with the exhibit now being forwarded.

I am, Sir, with great respect,

Very sincerely yours, (Signed) E. J. Henning, Assistant Secretary.

Incl. 28153.

[fol. 42] Department of Justice, United States Attorney's Office, New York

JCT. FR.
55642 HCC/292.

Apr. 7, 1925.

Honorable A. N. Hand, United States District Judge, Judge A. N. Hand's Chambers, Woolworth Building, New York, N. Y.:

In Re Writ of Habeas Corpus Issued in Behalf of Alien Emanuel Vajtauer

Sir:

I have the honor to refer to the above writ of habeas corpus which was argued before you some days ago. The relator's petition and the respondent's return referred to certain exhibits which were before the Department of Labor and which were not attached to the respondent's return for the reason that the Washington officials in the Department had failed to forward them.

Since the argument the Department of Labor has forwarded these exhibits and I have the honor to submit them as a part of the respondent's return. It may be that the petitioner will object to them being made a part of the return in view of the fact that you did not have them when the case was argued. I cannot see much merit to this because your Honor perhaps could not have read them

had you received them at that time. They are in a foreign language but the parts referred to have been translated and were before the Department of Labor and that part that was translated is in the return and is in the English language.

I am sending a copy of this letter to the attorney for the relator.

Respectfully, Emory R. Buckner, United States Attorney.

[fol. 43] IN UNITED STATES DISTRICT COURT

[Title omitted]

Isaac Shorr, attorney for relator, Walter H. Pollak, Counsel.

Emory R. Buckner, United States Attorney, for Henry H. Curran, Commissioner of Immigration, James C. Thomas, Asst. U. S. Attorney, counsel.

OPINION—April 20, 1925

AUGUSTUS N. HAND, District Judge:

The relator, an alien and citizen of Czecho Slovakia, arrived at the Port of New York, on the S. S. Minnekahda on December 1, 1923. Upon an anonymous complaint signed "a union man," to the effect that he "is inciting the people against the government and convincing them that their only hope is in the communist workers party of America, who will force the people from the capitalist oppression," a warrant was issued on April 4, 1924, by the Assistant Secretary of Labor, that the relator be taken into custody and granted a hearing to show cause why he should not be deported.

[fol. 44] After a hearing which began on May 14, 1924, and was concluded on August 27, 1924, a warrant of deportation was issued by the Acting Secretary of Labor on the ground that the relator (1) believed in and advised the overthrow of the government of the United States; (2) wrote, published or had in his possession for circulation written or printed matter advocating opposition to all organized government; (3) wrote, published or had in his possession for circulation written or printed matter advocating the overthrow by force and violence of the government of the United States.

Before the second hearing the new Immigration Law went into effect, Section 23 of which provides as follows:

"Whenever any alien attempts to enter the United States the burden of proof shall be upon such alien to establish that he is not subject to exclusion under any provision of the immigration laws; and in any deportation proceeding against any alien the burden of proof shall be upon such alien to show that he entered the United States lawfully, and the time, place and manner of such entry into the United States, but in presenting such proof he shall be entitled to the production of his immigration visa, if any, or

of other documents concerning such entry, in the custody of the Department of Labor."

The foregoing section created a new rule of procedure in immigration cases. I cannot see that the application of it to any pending proceeding was illegal. The hearing held May 14, 1924, was not closed and when it was continued on August 27, the Inspector asked the attorney for the relator:

"Q. Do you desire to place the alien under oath and permit his examination?

A. No, I will file a supplemental brief in ten days or two weeks."

In other words, the relator persisted in the position he had taken at the first session of refusing to be examined as to his identity, i. e., whether he was the person who wrote Exhibit A, a pamphlet [fol. 45] on the Revolution and Dictatorship of the Proletariat from which portions purporting to be translations were read to him, whether he delivered a speech at the Spravedvost Hall on March 21, 1924, in Chicago, of which an alleged account was produced; whether he was a member of the Communist party, and whether he was the author of certain remarks set forth in the report of the Fourth Congress of the Communist International held at Moscow.

No reason was given for refusal to answer these questions, but I shall assume that the refusal was in the exercise of the relator's constitutional rights. I am also in that event ready to go the length of saying that the remarks if made by the relator at the Moscow Congress were not evidential of much of anything, and that the Chicago speech was not properly proved, and that he was not identified as the author of the pamphlet, Exhibit A. It is true that if the relator was justified in claiming his constitutional privilege, no inference can be drawn against him for exercising that right. It is equally true, however, that such a refusal to answer cannot take the place of any evidence which he is required to produce in order to avoid deportation. He has the burden of showing that he entered the United States lawfully; that burden was not met when he refused to be examined; we do not know what the examination might have disclosed, but a refusal to furnish any evidence for whatever reason, and a reliance solely on his passport, does not meet the burden of proof or require the government to go further.

[fol. 46] It is to be remembered that he is the respondent in a deportation proceeding in which he had the burden of showing that he was not among the excluded classes.

If the failure to assert his constitutional privilege in terms be treated as placing the relator merely in the position of a witness who without justification refuses to answer, then there is some basis for the finding of the Department that the relator was the author of the various utterances and publications attributed to him and some basis for the other findings. Bilokumsky v. Tod, 263 U. S. 140, and the court would be without jurisdiction to disturb them because based not only on a failure of the relator to go forward with proof but on affirmative evidence against him.

The writ is dismissed and the relator remanded.

A. N. H., D. J.

[fol. 47] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF ORDER DISMISSING WRIT OF HABEAS CORPUS

SIR: Please take Notice, that the within is a true copy of an order duly made and entered in the within-entitled action, and filed in the office of the clerk of the District Court for the Southern District of New York, on the 23rd day of April, 1925.

Dated New York, April 24, 1925.

Yours, etc., Isaac Shorr, Attorney for Relator.

Office & P. O. Address: 80 East 11th Street, Borough of Manhattan City of New York.

To Emory R. Buckner, Esq., Attorney for Respondent, United States Attorney for the Southern District of New York.

[fol. 48] IN UNITED STATES DISTRICT COURT

[Title omitted]

JUDGMENT—Filed April 23, 1925

The petition and writ of habeas corpus for the release of the above-named relator having come on to be heard before this Court on the 2nd day of February, 1925, and thereafter certain missing portions of the record having been submitted, was re-argued on the 13th day of April, 1925, and the respondent having filed a return to said petition and writ, and the relator having filed a traverse to said return, and after hearing Walter H. Pollak, Esq., of counsel for the relator, in support thereof, and James C. Thomas, Esq., Assistant United States Attorney, in opposition thereto, it is

Ordered that the said writ of habeas corpus be and the same hereby is dismissed, and the relator be and he hereby is remanded to the custody of the Commissioner of Immigration at the Port of New York, and it is further

Ordered that the operation of this order be stayed and it hereby is stayed ten days from the entry hereof pending the preparation of an appeal.

Enter.

Augustus N. Hand, U. S. D. J.

[File endorsement omitted.]

[fol. 49] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed April 23, 1925

To the Honorable the Judges of the United States District Court for the Southern District of New York:

Now comes the relator, Emanuel Vajtauer, by Isaac Shorr, his attorney, and respectfully shows that an order was made, and filed in this court on the 23d day of April, 1925, dismissing the writ of habeas corpus herein and remanding him to the custody of the United States Commissioner of Immigration at the Port of New York and that in and by said order manifest error was committed, as appears from your petitioner's assignment of errors filed herein, and your petitioner appeals to the Supreme Court of the United States from said order and prays that his appeal be allowed and a citation issued in accordance with law and that a transcript of the record and proceedings upon which said decree was made, duly authenticated, be sent to the Supreme Court of the United States pursuant to the rules and provisions of law in such case made and provided.

Dated New York, April 23d, 1925.

Emanuel Vajtauer, Petitioner. Isaac Shorr, Attorney for Petitioner.

80 East 11th Street, New York City.

[File endorsement omitted.]

[fol. 50] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—Filed April 23, 1925

Now comes the relator above named and files the following assignment of errors upon which he will rely upon his prosecution of an appeal from the order of this court made and entered on the — day of April, 1925.

First. That the United States District Court for the Southern District of New York erred in dismissing the writ of habeas corpus herein.

Second. That said court erred in not holding that the relator was deprived of liberty and property without due process of law, contrary to Article 5 of Amendments to the Constitution of the United States.

Third. That the said court erred in holding that relator's passport was not sufficient evidence to meet the burden imposed upon him by Section 23 of the Immigration Act of 1924 of establishing: that he entered the United States lawfully."

Fourth. That the court erred in holding that said Section 23 of the Immigration Act of 1924 had any application to the relator in view of the fact that there was no finding of illegal entry in the warrant of deportation.

Fifth. That the court erred in holding that the burden was upon the alien under said section 23 of the Immigration Act of 1924 of establishing that he was not one of any of the excluded classes of aliens.

[fol. 51] Sixth. That the court erred in holding that the application of section 23 of the Immigration Act of 1924 to pending proceedings did not necessitate construing said act as an ex post facto law in violation of Subdivision 3 of Section 9 of Article I of the Constitution of the United States, and in holding that there was no objection to applying said section to pending proceedings.

Seventh. That the said court erred in construing said section 23 of the Act of 1924, and that the said construction placed upon section 23 of the Immigration Act of 1924 deprived the relator of liberty and property without due process of law in violation of Article 5 of the Amendments to the Constitution of the United States.

Eighth. That the said court erred in not holding that there was no evidence in the record to support the charges in the warrant of arrest and/or the findings in the warrant of deportation.

Ninth. That the said court erred in not holding that the ruling of the Department of Labor was based upon an error of law, i. e. a misconception of the scope, meaning and implication of the decision of the United States Supreme Court in Bilokumsky v. Tod (263 U. S. 149).

Tenth. That the said court erred in not holding that the silence of the relator or his failure to answer immaterial questions was no evidence in support of the charges in the warrant of arrest and/or the findings in the warrant of deportation.

Eleventh. That the said court erred in not holding that the silence of the relator or his failure to answer as to questions concerned with matters unrelated to any charge in the warrant of arrest was no evidence in support of the charges in the warrant of arrest and/or the findings in the warrant of deportation.

[fol. 52] Twelfth. That the court erred in not holding that the silence of the relator, or his failure to answer questions put to him before he had been given an opportunity to examine the evidence upon which the warrant of arrest was issued, constituted no evidence in support of the charges in the warrant of arrest and/or the findings in the warrant of deportation.

Thirteenth. That the court erred in holding that the relator entered the country illegally inasmuch as no charge of illegal entry was contained in the warrant of arrest.

Fourteenth. That the court erred in holding that the relator entered the country illegally inasmuch as the Secretary of Labor never made a finding to that effect.

Fifteenth. That the said court erred in not holding that the proceedings in the Department of Labor failed to afford the relator the protection guaranteed by the rules of the Labor Department as hereinafter more fully set forth and thereby said proceedings became and were unfair, and deprived relator of liberty and property without due process of law contrary to Article 5 of Amendments to the Constitution of the United States.

Sixteenth. That the said court erred in not holding said proceedings violated Labor Department Rule 22, Subdivision 3, in that the warrant of arrest was issued upon an unsworn statement of a person not a sworn officer of the government, i. e. an anonymous letter signed "a union man" and actually transcribed by his daughter and the facts stated by the inspector reporting the case were not within his personal knowledge.

Seventeenth. That the said court erred in not holding that said proceedings violated Labor Department Rule 22, subdivision 5(b) which permits the alien to inspect the warrant of arrest "and all the evidence upon which it was issued" "at the beginning of the hearing" but on the other hand the inspector in charge refused to permit the alien such right of inspection at the beginning or at any other time during the hearing.

[fol. 53] Wherefore, the relator prays that said order be reversed and that such other and further orders, directions and decrees be made as shall be in accordance with law.

Dated New York, April 23, 1925.

Respectfully submitted, Isaac Shorr, Attorney for Relator.

Office & P. O. Address: 80 East 11th Street, Borough of Manhattan, City of New York.

[File endorsement omitted.]

[fol. 54] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed April 23, 1925

Upon reading the petition for appeal herein and on consideration of the assignment of errors presnted therewith, it is

Ordered, that the appeal prayed for be and it hereby is allowed and that a certified transcript of the record and proceedings herein be transmitted to the Supreme Court of the United States.

Dated New York, April 23d, 1925.

F. A. Winslow, United States District Judge.

[File endorsement omitted.]

[fol. 55] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER RE ORIGINAL EXHIBITS—Filed May 11, 1925

Upon the annexed consent and upon all the proceedings hitherto had herein, and it appearing that an appeal in the above entitled proceeding is pending in the United States Supreme Court, it is hereby

Ordered that the following original papers contained in the files of this court be transmitted to the Clerk of the United States Supreme Court, but that copies thereof need not be printed in the transcript of record.

(1) Government Exhibit "A", a pamphlet in a foreign language consisting of 46 pages and a front cover.

(2) A pamphlet entitled, "Fourth Congress of the Communist International—Abridged report of meetings held at Petrograd and Moscow, November 7—December 3, 1922," which was before the District Court upon its consideration of the above entitled proceeding and a portion of which appears verbatim in the record.

Enter.

Augustus N. Hand, U. S. D. J.

[File endorsement omitted.]

[fol. 55½] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE ORDER RE ORIGINAL EXHIBITS

It is hereby stipulated and consented that the annexed order may be entered without further notice.

Dated New York, May 11, 1925.

Isaac Shorr, Attorney for Relator. Emory R. Buckner, U. S. Attorney, Attorney for Respondent.

[fol. 56] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ADMITTING TO BAIL

Application having been this day made by the above named Appellant, that he be admitted to bail pending consideration and disposal of the above entitled cause by this Court, and it appearing that

an appeal to this Court from an order made and filed with the United States District Court for the Southern District of New York on the 23rd day of April, 1925, dismissing a Writ of Habeas Corpus herein and remanding Appellant to the custody of the United States Commissioner of Immigration at the Port of New York, has been duly allowed by order of the United States District Court on April, 23, 1925, certified copy of which has this day been filed herein, and after hearing counsel for the Appellant in support of said application and H. S. Ridgeley, Assistant to the Attorney General, Counsel for the Appellee,

It is ordered that the said Appellant, Emanuel Vajtauer be admitted to bail pending the consideration and disposal of said cause by this Court, on condition that he give a bond in the penal sum of Two Thousand Dollars ($2,000) as surety, to be approved by the Clerk of the said District Court for the Southern District of New York, and conditioned for his appearance and surrender pursuant to the ultimate order of this Court in such cause, and for his obedience to that order and to any intervening order in the cause which this Court may make.

Harlan F. Stone, Associate Justice.

Washington, D. C., April 28, 1925.

[fol. 57] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE TRANSCRIPT OF RECORD

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated New York, May 11, 1925.

Isaac Shorr, Attorney for Relator-Appellant. Emory R. Buckner, United States Attorney, attorney for Respondent-Appellee.

[fols. 58 & 59] CITATION—In usual form, showing service on Emory R. Buckner; filed April 24, 1925; omitted in printing

[fol. 60] IN UNITED STATES DISTRICT COURT

[Title omitted]

CLERK'S CERTIFICATE

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the said District in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this eleventh day of May in the year of our Lord one thousand nine hundred and twenty-five and of the Independence of the said United States the one hundred and forty-ninth.

Alex Gilchrist, Jr., Clerk. (Seal District Court of the United States.)

Endorsed on cover: File No. 31,172. S. New York D. C. U. S. Term No. 461. The United States of America ex rel. Emanuel Vajtauer, appellant, vs. The Commissioner of Immigration at the Port of New York. Filed May 12th, 1925. File No. 31,172.

(7490)